

United States
Circuit Court of Appeals
For the Ninth Circuit.

MOORE DRY DOCK COMPANY and FIREMAN'S FUND
INDEMNITY COMPANY, a corporation,

Appellants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner for the
Thirteenth Compensation District of the Bureau of Em-
ployees' Compensation, Federal Security Agency, and
LUELLA G. CAMPBELL, also known as LUELLA G.
KELLY, alleged widow of WILLIAM ANGUS CAMP-
BELL, deceased,

Appellees.

Apostles on Appeal

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

FEB 5 - 1948

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

LEONARD, HANNA & BROPHY,
465 California Street,
San Francisco, California,

Attorneys for Complainants
and Appellants.

FRANK J. HENNESSY,
United States Attorney,
Northern District of California,
Post Office Building,
San Francisco, California,

Attorney for William H. Pillsbury,
Respondent and Appellee.

In the District Court of the United States,
Northern District of California, Southern
Division

No. 26718-H

MOORE DRY DOCK COMPANY, and FIRE-
MAN'S FUND INDEMNITY COMPANY, a
Corporation,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commis-
sioner for the Thirteenth Compensation Dis-
trict of the Bureau of Employees Compensation,
Federal Security Agency, and LUELLA G.
CAMPBELL, also known as LUELLA G.
KELLY, alleged widow of WILLIAM ANGUS
CAMPBELL, Deceased,

Respondents.

COMPLAINT FOR INJUNCTION

Complainants complain of Respondents above
named and allege as follows:

I.

That complainant Moore Dry Dock Company is,
and was at all times mentioned herein, a corpora-
tion duly organized and existing under and by vir-
tue of the laws of the State of California, duly
organized to operate and do business in the State
of California under and by virtue of the laws of
the State of California.

II.

That the complainant Fireman's Fund Indemnity Company is, and was at all times herein mentioned, a corporation, duly organized and existing under and by virtue of the laws of the [1*] State of California, and duly organized to operate and do business in the State of California under and by virtue of the laws of the State of California.

III.

That the respondent Warren H. Pillsbury is, and at all times herein mentioned, has been Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees Compensation, Federal Security Agency, formerly known as the United States Employees' Compensation Commission, and that said Thirteenth Compensation District includes the State of California; that as said Deputy Commissioner, the said Warren H. Pillsbury administers the provisions of that certain Act of Congress known as the "Longshoremen's and Harbor Workers' Compensation Act" (Public Act No. 803, 69th Congress).

IV.

That the respondent Luella G. Campbell, also known as Luella G. Kelly, is the person in whose favor an Award of Death Benefit was made, as hereinafter related, and she is, therefore, beneficially interested in this proceeding, and for that reason is made a party respondent.

*Page numbering appearing at foot of page of original certified Transcript of Record.

V.

That on the 12th day of May, 1945, William Angus Campbell was in the employ of the Moore Dry Dock Company at Oakland, California, as a stage rigger and was engaged in ship repair operations on a completed vessel on navigable waters of the United States; that said William Angus Campbell then and there sustained injury arising out of and in the course of his employment, resulting in immediate death, when he fell from the vessel to the water and was drowned.

VI.

That on the 12th day of May, 1945, the Fireman's Fund Indemnity Company, under and by virtue of a contract with the [2] Moore Dry Dock Company, insured said employer against the liability imposed against it by the Longshoremen's and Harbor Workers' Compensation Act.

VII.

That said Luella G. Campbell, also known as Luella G. Kelly, filed her claim with the respondent Warren H. Pillsbury, as Deputy Commissioner, against the complainants above named, for the purpose of recovering benefits under the Longshoremen's and Harbor Workers' Compensation Act by reason of the death of William Angus Campbell; that thereafter the matter came on regularly for hearing before said Deputy Commissioner, the issues were joined, and evidence, both oral and documentary, was received and the matter submitted for decision.

VIII.

That thereafter, on the 3rd day of December, 1946, the respondent Warren H. Pillsbury, as Deputy Commissioner, filed in his office and served upon the parties to said proceedings a Compensation Order—Award of Death Benefit; that a copy of said Compensation Order—Award of Death Benefit is attached hereto as Exhibit “A” and made a part hereof.

IX.

That no proceedings for the suspension or setting aside of said Compensation Order—Award of Death Benefit filed December 3, 1946, have ever been instituted as provided in subdivision (b) of Section 921 of said Act, or elsewhere or at all. That under the provisions of said Act the said Order became effective when filed on December 3, 1946, and except for these proceedings to suspend or set aside said Order would become final at the expiration of thirty days after said December 3, 1946.

X.

That said Compensation Order—Award of Death Benefit is not in accord with law in finding the respondent Luella G. Campbell, [3] also known as Luella G. Kelly, to be a legal dependent upon the deceased employee on May 12, 1945, and entitled to a death benefit at the rate of \$13.13 a week commencing with May 13, 1945, and continuing thereafter until the further order of the Deputy Commissioner, when the evidence shows without contradiction,

(a) That said Luella G. Campbell had not been supported by the deceased William Angus Campbell

for over twenty years before his fatal injury on May 12, 1945.

(b) That said Luella G. Campbell did on May 14, 1938, marry one William J. M. Kelly at Brechin, near Nanaimo, in British Columbia, and these two have since that time lived as man and wife, her support for that period being supplied by said Kelly.

XI.

Complainants are informed and believe and on such information and belief allege that respondent Luella G. Campbell, also known as Luella G. Kelly, will be unable to pay to compainants herein the amounts which compainants are required to pay by reason of said Compensation Order—Award of Death Benefit, and that unless the enforcement of said Order be stayed by injunction herein complainants will suffer irreparable damage and injury.

XII.

That the complainants have no adequate nor any remedy other than these proceedings which are brought pursuant to the provisions of Section 921 of the Longshoremen's and Harbor Workers' Compensation Act which provides that if not in accordance with law a compensation order may be suspended or set aside in whole or in part through injunction proceedings brought by any party in interest against the Deputy Commissioner making the order.

XIII.

That all of said proceedings before the said Deputy Commissioner are contained in a file of said

Deputy Commissioner under Claim Number 2539, Case Number 8-1620, together with the testimony of witnesses heard by the Deputy Commissioner or by deposition.

That the Deputy Commissioner should be required to file with the clerk of this court, at a time to be fixed by the court, a certified copy of all proceedings had before him, together with all exhibits, transcripts of testimony, letters and documents of every nature and description received by said Deputy Commissioner in consideration of said claim.

Wherefore, complainants pray that process in due form of law according to the course of this Honorable Court may issue and that respondents may be cited to appear and answer all and singular the matters hereinbefore set forth and that the order of said Deputy Commissioner filed December 3, 1946, be set aside and declared a nullity and that a mandatory injunction be issued herein setting aside and restraining enforcement of said purported Order dated December 3, 1946, and that the respondents be permanently enjoined from making or attempting to make any further orders with respect to said proceeding; that pending the hearing of the cause or in less than three days notice to the parties interested and the Deputy Commissioner, this Honorable Court issue an interlocutory injunction allowing the stay of such payments pending the determination of this cause; and for such other further and different relief as to the Court may seem justified, and for costs incurred herein.

LEONARD, HANNA &

BROPHY,

Attorneys for Complainants.

(Here follows Exhibit "A"—Compensation Order—Award of Death Benefit, Case No. 8-1620, Claim No. 2539, filed in the office of Warren H. Pillsbury, as Deputy Commissioner, on December 3, 1946, a copy of which Order is in the Volume of Transcript of Testimony at Hearing, March 18, 1946.) [4-A]

State of California,
City and County of San Francisco—ss.

L. M. Caldwell, being first duly sworn, on behalf of the above-named complainants, deposes and says: That he is assistant vice president of the complainant Fireman's Fund Indemnity Company; that he has read the foregoing Complaint for Injunction and known the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

L. M. CALDWELL,
Assistant Vice President,
Fireman's Fund Indemnity
Company.

Subscribed and sworn to before me this 30th day of December, 1946.

KATHRYN E. STONE,
Notary Public in and for said City and County of
San Francisco, State of California.

My commission expires March 15, 1949.

[Endorsed]: Filed Dec. 31, 1946. [5]

[Title of District Court and Cause.]

ORDER

Complainants' petition for an interlocutory injunction having been briefed, argued and submitted for decision, and having been fully considered,

It Is Ordered that the interlocutory injunction be, and the same is hereby granted pending final disposition of the claim of Luella G. Kelly.

Jones v. Shepard, 20 F. Supp. 345;

Walliser v. Bassett, 33 F. Supp. 636;

Atlantic Stevedoring Co. v. Lowe, 18 F.
Supp. 602.

Dated March 11, 1947.

GEORGE B. HARRIS,

United States District Judge.

[Endorsed]: Filed March 11, 1947. [6]

[Title of District Court and Cause.]

MOTION OF DEFENDANT WARREN H.
PILLSBURY, DEPUTY COMMISSIONER,
TO DISMISS BILL OF COMPLAINT

Now comes the defendant Warren H. Pillsbury, Deputy Commissioner of the Bureau of Employees Compensation, Federal Security Agency for the Thirteenth Compensation District, by his attorney, Frank J. Hennessy, United States Attorney for the Northern District of California, and moves this Honorable Court to dismiss the Bill of Complaint after review of the Compensation Order filed herein for the following reasons:

1. That the Bill of Complaint filed herein does not state a cause of action and does not entitle plaintiffs to any relief, nor does said Bill of Complaint state a [7] claim against the defendant Warren H. Pillsbury, Deputy Commissioner, upon which relief can be granted.

2. That it appears from the Bill of Complaint, including the Transcripts of Testimony taken before the Deputy Commissioner on file herein, that the findings of fact that the Deputy Commissioner, in the compensation order filed by him on December 3, 1946, complained of in the Bill of Complaint, was supported by evidence and under the law said findings of fact should be regarded as final and conclusive.

3. That it appears from the Bill of Complaint, including said Transcripts of Testimony, that said

compensation order complained of herein is in all respects in accordance with law.

4. For such other good and sufficient reasons as may be shown.

/s/ FRANK J. HENNESSY,
United States Attorney,
By W. E. LICKING,
Assistant U. S. Atty.,
/s/ JAMES T. DAVIS,
Assistant United States
Attorney,

Attorneys for Respondent Warren H. Pillsbury,
Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees Compensation, Federal Security Agency.

[Endorsed]: Filed March 18, 1947. [8]

[Title of District Court and Cause.]

ORDER

Respondent's motion to dismiss having been argued, briefed and presented to the court for decision, and the same having been duly considered,

It Is Ordered that the motion be and the same hereby is Denied and that the award of the Compensation Commissioner dated December 3, 1946, be and the same hereby is confirmed.

Dated June 25, 1947.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed June 25, 1947. [9]

[Title of District Court and Cause.]

NOTICE OF MOTION RE INTERLOCUTORY
INJUNCTION

To the Respondent, Warren H. Pillsbury, Deputy
Commissioner of the Federal Security Agency,
Bureau of Employees' Compensation, and to
United States Attorney, Attorney for said re-
spondent:

To Luella G. Campbell, also known as Luella G.
Kelly, and to Victor B. Harrison, her Attorney:

You and each of you will please take notice that
the Complainants above named, through their at-
torney, will move the above entitled Court, in the
Court Room of Judge George B. Harris, located in
the Post Office Building, San Francisco, California,
on October 6, 1947, at the hour of 10:00 a.m., or as
soon thereafter [10] as the matter may be heard
for its Order for an interlocutory injunction staying
the execution of the compensation award issued
herein pending the appeal of this matter to the
United States Circuit Court of Appeals for the
Ninth District.

Said motion will be made upon the ground that
Complainants herein will be irreparably damaged
if an injunction is not allowed during this appeal,
and the granting of said injunction will obviate
much trouble, vexation and multiplicity of suits.

Said motion will be based upon the Affidavit of

C. R. Umland filed herewith and upon the records, files and proceedings herein.

/s/ WARREN L. HANNA,
Proctor for Libelants.

Dated this 24th day of September, 1947. [11]

State of California,
City and County of San Francisco—ss.

Gretchen Becker, being duly sworn, says that affiant is a citizen of the United States, over 18 years of age, a resident of the City and County of San Francisco and not a party to the within action. That affiant's business address is 465 California Street, San Francisco. That affiant served copies of the attached Notice of Motion Re Interlocutory Injunction by placing said copies into separate envelopes respectively addressed as follows:

Warren H. Pillsbury, 630 Sansome Street,
San Francisco, California;

Frank J. Hennessy, United States Attorney,
422 Post Office Building, San Francisco 1,
California;

Luella G. Kelly, 235 St. George Street, Na-
naimo, British Columbia, Canada;

Victor B. Harrison, 141 Bastion Street, Na-
naimo, British Columbia, Canada.

That said envelopes were then sealed and postage fully prepaid thereon, and that said envelopes were each of them on September 24th, 1947, deposited in the United States mail at San Francisco. That

there is delivery service by United States and/or Canadian mail to the places so addressed, or regular communication by such mail or mails between the place of mailing and the places so addressed.

/s/ GRETCHEN BECKER.

Subscribed and sworn to before me this 24th day of September, 1947.

[Seal] KATHRYN E. STONE,
Notary Public.

[Endorsed]: Filed Sept. 24, 1947. [12]

[Title of District Court and Cause.]

AFFIDAVIT FOR INJUNCTION PENDING
APPEAL

State of California,
City and County of San Francisco—ss.

C. R. Umland, being first duly sworn, deposes and says:

That he is Assistant Superintendent of Claims for the Fireman's Fund Indemnity Company, a corporation, one of the libelants in the above-entitled cause; that libelants will be irreparably damaged if an injunction is not allowed during this appeal in that if the award made in favor of respondent Luella G. Campbell, also known as Luella G. Kelly, is paid and then the determination on appeal is made in favor of libelants, much [13] trouble and vexation and multiplicity of suits will be involved in order to obtain the return of such moneys,

amounting at this time to more than \$1,500, particularly in view of the fact that said Luella G. Kelly is neither a citizen nor a resident of the United States, but resides in British Columbia, by reason of which the courts of the United States are not open to your complainants to enforce repayment of moneys which libelants are obligated to pay under the award if stay is not granted, and the advantage of this appeal will thereby be wholly lost to your libelants above named.

C. R. UMLAND,

Assistant Superintendent of Claims, Fireman's
Fund Indemnity Company.

Subscribed and sworn to before me this 24th day
of September, 1947.

[Seal] LINA M. REINECKE,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires November 19, 1950. [14]

State of California,

City and County of San Francisco—ss.

Gretchen Becker, being duly sworn, says that
affiant is a citizen of the United States, over 18
years of age, a resident of the City and County of
San Francisco and not a party to the within action.
That affiant's business address is 465 California
Street, San Francisco. That affiant served copies of
the attached Affidavit for Injunction Pending Ap-

peal by placing said copies into separate envelopes respectively addressed as follows:

Warren H. Pillsbury, 630 Sansome Street,
San Francisco, California;

Frank J. Hennessy, United States Attorney,
422 Post Office Building, San Francisco 1,
California;

Luella J. Kelly, 235 St. George Street, Na-
naimo, British Columbia, Canada;

Victor B. Harrison, 141 Bastion Street, Na-
naimo, British Columbia, Canada.

That said envelopes were then sealed and postage fully prepaid thereon, and that said envelopes were each of them on September 24th, 1947, deposited in the United States mail at San Francisco. That there is delivery service by United States and/or Canadian mail to the places so addressed, or regular communication by such mail or mails between the place of mailing and the places so addressed.

/s/ GRETCHEN BECKER.

Subscribed and sworn to before me this 24th day
of September, 1947.

[Seal] KATHRYN E. STONE,
Notary Public.

[Endorsed]: Filed Sept. 24, 1947. [15]

[Title of District Court and Cause.]

CITATION AND ADMISSION OF SERVICE

The United States of America to the respondents Warren H. Pillsbury, Deputy Commissioner of the Thirteenth Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, and Luella G. Campbell, also known as Luella G. Kelly:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, Ninth Circuit, to be held at the Post Office Building in the City and County of San Francisco, State of California, within forty (40) days from the date hereof, pursuant to a petition for appeal filed in the Clerk's Office of the District Court of the United States, for the [16] Northern District of California, Southern Division; wherein the Moore Dry Dock Company, a corporation, and the Fireman's Fund Indemnity Company, a corporation, are the appellants, and Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District under the Longshoremen's and Harbor Workers' Compensation Act, and Luella G. Campbell, also known as Luella G. Kelly, are the respondent-appellees, to show cause, if any there be, why the decree and denial of complaint for injunction mentioned in said petition for appeal should not be corrected and speedy justice should not be done in that behalf.

Given under my hand in the City and County of San Francisco, in the District and Circuit aforesaid, this 24th day of September, 1947, and in the independence of America the One Hundred and Seventy-first year.

GEORGE B. HARRIS,
United States District Judge for the Northern
District, Southern Division.

Receipt of copy of the above Citation and Admission of Service is hereby acknowledged on this 24th day of September, 1947.

FRANK J. HENNESSY,
U. S. Attorney, and Attorney for Respondent
Warren H. Pillsbury.

By C. ELMER COLETT.

[Endorsed]: Filed Sept. 24, 1947. [17]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now the complainants in the above-entitled cause, by their proctor, and in connection with their petition for appeal, assign the following errors in the decree of this court entered:

I.

That the United States District Court for the Northern District of California, Southern Division, erred in making and entering the order and decree, dated the 25th day of June, 1947, denying the com-

plainants' application for mandatory injunction to restrain the order of the respondent, Warren H. Pillsbury, as set forth in Complaint for Injunction filed on December 30, 1946. [18]

II.

That the said court erred in ordering a denial of the motion to dismiss and in confirming the award of compensation made by the respondent Warren H. Pillsbury, made and filed on December 3, 1946.

III.

That said court erred in refusing to enter a decree and order herein declaring that the said compensation order of respondent Warren H. Pillsbury, described in the complainants' complaint, was not in accordance with law, and that the same be vacated and set aside.

IV.

That said court erred in supporting the finding of respondent Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, that respondent Luella G. Campbell, also known as Luella G. Kelly, was a legal dependant of the deceased employee, William Angus Campbell, on May 12, 1945; and that said Luella G. Kelly was thereby entitled to a death benefit at the rate of \$13.13 a week commencing with May 13, 1945, and continuing thereafter until the further order of the Deputy Commissioner; that

there is no justification in law or fact for such finding of dependency when the evidence showed without contradiction that said Luella G. Kelly had not been supported by the deceased William Angus Campbell for over twenty years before his fatal injury on May 12, 1945, and showed further that said Luella G. Kelly did in May, 1938, seven years prior to the death of said William Angus Campbell, marry one William J. M. Kelly, and did thereafter continuously until the death of said William Angus Campbell and, in fact, until this day live with him as his wife and receive her complete and sole support from said William J. M. Kelly; and that therefore your [19] Honorable Court exceeded its jurisdiction and committed an act without its jurisdiction in refusing the issuance of a permanent injunction, as requested, and in confirming the award of the respondent Warren H. Pillsbury.

V.

That said court erred in confirming the application of section 2(16) of the Longshoremen's and Harbor Workers' Compensation Act (U. S. Code Title 33, section 902(16)) to the facts of this case in such manner as to find respondent Luella G. Campbell, also known as Luella G. Kelly, to have been a legal dependent upon the deceased employee, within the meaning of the above-mentioned Compensation Act, as determined by respondent Warren H. Pillsbury, and in confirming the granting of benefits to said Luella G. Kelly when the provisions of section 9b of the Longshoremen's and Har-

bor Workers' Compensation Act (U. S. Code Title 33, section 909b) preclude the payment of benefits to a surviving wife except during widowhood, whereas said Luella G. Kelly has at all times since the death of the deceased employee (and for seven years prior thereto) been married to and living with William J. M. Kelly as his wife, and does not come within the provisions of said section.

/s/ WARREN L. HANNA,
Proctor for Complainants.

Receipt of copy of the above Assignment of Errors is acknowledged this 24th day of September, 1947.

/s/ FRANK J. HENNESSY,
United States Attorney,
Attorney for Respondent
William H. Pillsbury.
By C. ELMER COLETT.

[Endorsed]: Filed Sept. 24, 1947. [20]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The petition of the complainants in the above-entitled cause for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit is hereby allowed, the appellants to file a bond in the sum of Two Hundred and Fifty

Dollars to be approved by the undersigned Judge and conditioned as a bond for costs of the said Circuit Court of Appeals.

It is further ordered that a copy of this order, certified by the clerk to be such, may be served upon the solicitors for said Warren H. Pillsbury in lieu of personal service upon him. [21]

Done in Chambers this 24th day of September, 1947.

GEORGE B. HARRIS,
United States District Judge for the Northern
District, Southern Division.

Receipt of copy of the above Order Allowing Appeal is hereby admitted this 24th day of September, 1947.

FRANK J. HENNESSY,

U. S. Attorney,

Attorney for Respondent

Warren H. Pillsbury.

By C. ELMER COLETT.

[Endorsed]: Filed Sept. 24, 1947. [22]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL
AND FOR INJUNCTION PENDING AP-
PEAL

The libelants, Moore Dry Dock Company, a corporation, and Fireman's Fund Indemnity Company, a corporation, each believing itself aggrieved by the

decree of the court made and entered on the 25th day of June, 1947, wherein and whereby its libel and bill of complaint for injunction was denied, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and your petitioners respectfully pray that this appeal may be allowed, that a citation be issued directed to the above-named respondents and each of them, as provided by law, and that a transcript of record [23] and proceedings upon which said decree was based and duly authenticated and sent to the Circuit Court of Appeals for the Ninth Circuit.

MOORE DRY DOCK
COMPANY and
FIREMAN'S FUND
INDEMNITY COMPANY.

By /s/ WARREN L. HANNA,
Their Proctor.

Receipt of copy of the above petition for allowance of appeal and for injunction pending appeal is hereby admitted this 24th day of September, 1947.

FRANK J. HENNESSY,
Attorney for Respondent
Warren H. Pillsbury,

By C. ELMER COLETT.

[Endorsed]: Filed Oct. 3, 1947. [24]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is Ordered that the Appellants herein may have to and including December 13, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated October 31, 1947.

GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed Oct. 31, 1947. [25]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, It Is Hereby Ordered that the Appellants herein may have to and including December 23, 1947, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated December 11, 1947.

GEORGE B. HARRIS,
United States District Court.

[Endorsed]: Filed Dec. 11, 1947. [26]

Federal Security Agency, Bureau of Employees
Compensation, 13th Compensation District

Case No. 8-1620. Claim No. 2539

In the Matter of the claim for compensation under
the Longshoremen's and Harbor Workers'
Compensation Act

LUELLA G. CAMPBELL, also known as
LUELLA G. KELLY, Widow of WILLIAM
ANGUS CAMPBELL, Deceased,
Claimant,

Against

MOORE DRY DOCK COMPANY,
Employer,
FIREMAN'S FUND INDEMNITY COMPANY,
Insurance Carrier.

COMPENSATION ORDER—AWARD OF DEATH BENEFIT

Such investigation in respect to the above entitled
claim having been made as is considered necessary,
and a hearing having been duly held in conformity
with law, the Deputy Commissioner makes the
following:

Findings of Fact

That on the 12th day of May, 1945, William
Campbell, husband of the claimant herein, was in
the employ of the employer above named at Oak-

land, in the State of California, in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Fireman's Fund Indemnity Company;

That on said day the said employee while performing service for the employer as a stage rigger and engaged in ship repair operations on a completed vessel on navigable waters of the United States at said harbor, sustained personal injury occurring in the course of and arising out of his employment, and resulting in immediate death as follows: He fell from the vessel into the water and was drowned:

That the average annual earnings of the employee herein at the time of his injury are not determined, and a determination thereof is deferred until later necessity arises, that the average weekly wage is admitted to exceed \$37.50;

That the claimant herein, Luella G. Campbell also known as Luella G. Kelly, was born December 26th, 1903, and was married to the employee, William Angus Campbell, on February 8th, 1922. The said employee left claimant on or about September 4th, 1923. During the following period of five months he wrote her on several occasions and thereafter did not communicate with her to the time of his death. He did not after his departure contribute to

her support or to the support of their two children; that such conduct constituted desertion of claimant by the said William Angus Campbell. In good faith and believing her husband, William Angus Campbell, to be dead, claimant married one William James Kelly on May 14th, 1938. At said time the said William Angus Campbell was still living. No divorce was ever had between claimant and William Angus Campbell, that therefore claimant was still the wife of William Angus Campbell at the time of his death on May 12th, 1945, and that the said William Angus Campbell was still deserting her at said time. That claimant is entitled to a death benefit at the rate of \$13.13 a week commencing with May 13th, 1945, and payable at said rate in installments each two weeks or monthly at her election until the further order of the Deputy Commissioner. That the children of the said William Angus Campbell had reached the age of 18 years prior to the time of his death.

The claimant's attorney, Mr. Victory B. Harrison, has rendered service to claimant in the prosecution of her claim of the reasonable value of \$150.00 and is entitled to a lien therefor upon compensation herein awarded.

Upon the foregoing facts, the Deputy Commissioner makes the following

Award

That the employer, Moore Dry Dock Company, and its insurance carrier, Fireman's Fund Indem-

nity Company, shall pay to the claimant compensation as follows:

To claimant, Luella G. Campbell, also known as Luella G. Kelly, the sum of \$13.13 a week payable in installments each two weeks or monthly at her election beginning with May 13, 1945, until the further order of the Deputy Commissioner, less, however, the sum of \$150.00 to be deducted from said payments and paid by defendants to said Victor B. Harrison upon his lien for attorney's fees.

Given under my hand at San Francisco, California, this 3rd day of December, 1946.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:s:mmc:

(From the Transcript of Testimony filed March 31, 1947.) [28]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 28 pages, numbered from 1 to 28, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Moore Dry Dock Company and Fireman's Fund Indemnity Company, a corporation, Complainants, vs. Warren H. Pillsbury, Deputy Commissioner of the Thirteenth Compensation District of the Bureau of Employees Compensation, etc., et al., Respondents, No. 26718H, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$5.30 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 23rd day of December, A.D. 1947.

[Seal]

C. W. CALBREATH,
Clerk,

/s/ M. E. VAN BUREN,
Deputy Clerk. [29]

[Endorsed]: No. 11819. United States Circuit Court of Appeals for the Ninth Circuit. Moore Dry Dock Company and Fireman's Fund Indemnity Company, a corporation, Appellants, vs. Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, and Luella G. Campbell, also known as Luella G. Kelly, alleged widow of William Angus Campbell, deceased, Appellees. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 23, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.